

### REMARKS

This document is filed in response to the final Office Action dated August 8, 2006 ("final Office Action") and the Advisory Action dated February 9, 2007 ("Advisory Action").

Applicants have amended claim 27 to particularly and distinctively point out the subject matter that Applicants deem as their invention. Support for the amendments can be found, e.g., in original claims 27 and 58. These amendments have necessitated cancellation of claim 58. Applicants have also added new claims 65-67, support for which can be found, e.g., at page 31, lines 23-32; page 43, lines 4-16; and in original claims 1 and 58. No new matter has been introduced.

Upon entry of the amendments, claims 27, 59, and 62-67 will be under examination. Reconsideration of this application is respectively requested in view of the following remarks.

#### I

Applicants would like to first discuss the two obviousness issues raised in the final Office Action and maintained in the Advisory Action.

First, the Examiner rejected claim 27 as being obvious over Kamarei et al., US Patent 4,749,522 ("Kamarei") in view of Proksch et al., US Patent 4,216,117 ("Proksch"). See the final Office Action, pages 3-5, section 5. Applicants disagree.

Nonetheless, for the sole purpose of moving this application forward, Applicants have amended claim 27 to include an additional step, i.e., mixing a stabilizing agent with the melted solution to produce a second solution. As neither Kamarei nor Proksch teaches or suggests this mixing step, Applicants submit that these two references, either alone or in combination, do not render claim 27 obvious.

Second, the Examiner rejected claims 27, 29, 58-60, and 62-64 as being obvious over Megneson, US Patent 5,547,873 ("Megneson") in view of Proksch. See the final Office Action, pages 5-6, section 6. Applicants have cancelled claim 58 above and claim 60 in the response to the final Office Action filed January 8, 2007.

It is the Examiner's position that Megneson teaches a method including exactly the same steps (excluding the last step) recited in claim 27. See the final Office Action, page 7, third

paragraph. Applicants disagree. In the response to the final Office Action, Applicants have clearly pointed out the difference between the Magneson method and the method of claim 27, i.e., the former produces native lipoprotein while the latter produces denatured lipoprotein.

For the sole purpose of expediting prosecution, Applicants have amended claim 27 to limit it to "the powder containing stabilized denatured lipoprotein." As stated above, Magneson teaches a method of producing native lipoprotein. In other words, the product made by the Magneson method does not contain "stabilized denatured lipoprotein," as required by amended claim 27. Proksch also does not teach or suggest a method for producing denatured lipoprotein. Therefore, Magneson, in view of Proksch, does not render claim 27 obvious.

Claims 29, 59, and 62-64 all depend from claim 27. For the above reasons, they are not rendered obvious by Magneson and Proksch, either alone or in combination.

In view of the above remarks, Applicants respectfully request withdrawal of these two rejections.

## II

Applicants now discuss the patentability of new claims 65-67 in view of Kamarei, Megneson, and Proksch.

New claim 65 depends from claim 27. For the same reasons set forth in Part I above, this claim is not obvious over Kamarei nor Megneson, in view of Proksch.

New claims 66 and 67, like claim 27, recite the mixing step described above. As neither Kamarei nor Proksch teaches or suggests this mixing step, they do not render these two claims obvious.

Claim 66 corresponds to claim 27 but recites the transitional phrase "consisting essentially of" instead of "comprising," which is recited in claim 27. The term "consisting essentially of" "limits the scope of a claim to the special material or steps 'and those that do not materially affect the basic and novel characteristic(s)' of the claimed invention." See MPEP § 2111.03, citing *In re Herz*, 190 USPQ 461 (CCPA 1976). Accordingly, claim 66, reciting this phrase, is limited to the special steps set forth therein and those that do not materially affect the basic characteristic of the claimed method, i.e., producing denatured lipoprotein.

As stated above, the Magneson method produces native lipoprotein. Based on this teaching, a skilled artisan would readily acknowledge that this method must include at least one step that either preserves the native structure of lipoprotein or re-natures lipoprotein that has been denatured. He or she also would understand that the method of claim 66 does not include this preserving/renaturing step, which would destroy the basic characteristic of the claimed method, i.e., producing denatured lipoprotein. In other words, the method of claim 66 is clearly different from the Magneson method, as the former excludes any preserving/renaturing step required by the latter. Proksch does not teach a method of producing denatured lipoprotein. Therefore, these two references do not render new claim 66 obvious.

Claim 67 is limited to "the powder containing stabilized denatured oxidized lipoprotein that binds to antibody DLH3." The specification teaches that antibody DLH3 specifically binds to denatured lipoprotein. See page 10, lines 17-21. As mentioned above, the product prepared by the Magneson method contains only native lipoprotein, which do not bind to antibody DLH3. In other words, Magneson does not teach a method of producing denatured lipoprotein that binds to antibody DLH3, as required by claim 67. Nor does Proksch. Accordingly, new claim 67 is not obvious over Magneson in view of Proksch.

In sum, new claims 65-67 are patentable over Kamarei, Magneson, and Proksch.

#### CONCLUSION

In view of the above remarks, Applicants submit that claims 27, 29, 59, and 62-67 are in condition for allowance. Favorable consideration of this application is thus respectfully solicited.

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Serial No. : 10/009,151  
Filed : April 16, 2002  
Page : 13 of 13

Attorney's Docket No.: 13723-002001 / F 2000-38-  
PCT/US

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Respectfully submitted,

Date: \_\_\_\_\_

4/9/2007



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